

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

WILLIAM LEONBERGER,)
Register No. 1098304,)
Plaintiff,)
v.) No. 06-4014-CV-C-SOW
C.O. BRANUM, et al.,)
Defendants.)

ORDER

On January 11, 2007, the United States Magistrate Judge granted plaintiff ten days in which to file an amended complaint, containing only exhausted claims against defendant Branum. The Magistrate Judge recommended that if plaintiff failed to file such amended complaint in a timely manner, defendant Branum's motion to dismiss be granted and plaintiff's claims against Branum be dismissed, without prejudice, for failure to exhaust administrative remedies, as required by 42 U.S.C. § 1997e. The Magistrate Judge further recommended that defendant Murphy's motion to dismiss be granted, and plaintiff's claims against Murphy be dismissed, without prejudice, for failure to exhaust administrative remedies, as required by section 1997e. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C). Neither an amended complaint nor exceptions has been filed.

A review of the record convinces the court that the recommendation of the Magistrate Judge is correct, in part. Plaintiff's unexhausted claims against defendant Murphy are dismissed, without prejudice, pursuant to 42 U.S.C. § 1997e, for failure to exhaust administrative remedies. However, pursuant to the recent Supreme Court case, Jones v. Bock, 549 U.S. ___, 127 S. Ct. 910 (2007), plaintiff's exhausted claims against defendant Branum will be allowed to proceed and his motion to dismiss is denied.

IT IS, THEREFORE, ORDERED that the Report and Recommendation of January 11, 2007, is adopted, in part. [19] It is further

ORDERED that defendant Murphy's motion to dismiss is granted and plaintiff's claims against defendant Murphy are dismissed, without prejudice, for failure to exhaust administrative remedies, as required by 42 U.S.C. § 1997e. [15] It is further

ORDERED that defendant Branum's motion to dismiss is denied [13].

/s/Scott O. Wright
SCOTT O. WRIGHT
Senior United States District Judge

Dated: February 12, 2007